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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,455	11/08/1999	CHRISTOPHER JAMES DANEK	435712000921	6666

41728 7590 04/06/2005

ASTHMATX, INC.
1340 SPACE PARK WAY
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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/436,455	Applicant(s) DANEK ET AL.	
	Examiner david shay	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on August 12, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 18-75 and 79-95 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 18-75 and 79-95 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-13, 18-52, 54-75, and 79-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley et al ('899) in combination with Burnside et al and Jackson et al. Farley et al ('899) teach a device claimed (see figures 2, 3, 6, 6a, and 8-11 and column 6, line 13 to column 198, line 6. The temperature sensor in the middle of leg 26 is considered inside same portions of the solder contacting are lead on the other and electrode are considered separate attachments, and the voids allowing the legs to reach from the ring to the open space, are lumens), as well as the equivalence of conductive electrode on insulative legs and conductive electrodes on conductive legs. Burnside et al teach an energy transfer device which can have the claimed basket length (see column 40, lines 34-66); various numbers of legs (see Figure 7-9, 39A, 39 B, 40A and 55); various temperature sensor locations (see column 17 lines 5-30); wherein the attaching of Burnside et al is equivalent to soldering, welding, or adhesive bonding; has a polymeric heating element (see column 38, line 34-41); attaching by means of heat shrink tubing (see, e.g. column 20, lines 48-62); a with each basket leg in a lumen (see Figures 40A and 40B); wherein the wall is reinforced by a metallic member (see Figure 71B); and a wire carrying current (see Figure 55). Jackson et al teach the use of a wire actuator, which alters the shape of the working element and also conducts energy to the working element. It would have been obvious to the artisan of ordinary skill to employ the leg, electrode and attaching structure of Burnside et al in the device of Farley et al since these are equivalents in the art, as shown by Burnside et al, and to employ heat shrink tubing as an attachment means for the electrode, since

Art Unit: 3739

this is a recognized attachment means as also taught by Burnside et al or to employ the conductive legs, since these are equivalent to non-conductive legs as taught by Farley et al and to employ sterilization, the visualization system; locating the temperature detector between the leg and the resistively heated element; the use of D.C.current; forming the legs from a single sheet of stainless steel; to stop delivering energy if a temperature change is not detected and including an optical fiber and CCD, since these provide no unexpected result; and since they are not critical, and in either case to employ the wire configuration taught by Jackson et al, since this would impart a dual function to the actuating member, thereby reducing the complexity and girth of the device, thus producing a device such as claimed.

Claims 53 and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley et al ('899) in combination with Burnside et al and Jackson et al as applied to claim 1-13, 18-52, 54-75, and 78-94 above, and further in combination with Fischell et al. Fischell et al teach the use of a sheath to actuate a multiple spline positioning device in a surgical device. It would have been obvious to the artisan of ordinary skill to employ the sheath configuration of Fischell et al, since this would facilitate insertion of the device and to include the control mechanism claimed – a control member attached to the handle, since this is notorious means for actuating devices on the distal portion of a bodily inserted device, official notice of which is hereby taken, thus producing a device such as claimed.

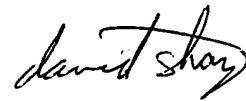
Art Unit: 3739

The examiner apologizes for the erroneous indication that claims 31-34 as allowable.

The teaching of Burnside et al regarding heat shrink tubing were missed when the examiner was first reviewing the references.

Applicant's arguments with respect to claims 1-13, 18-75, and 79-95 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to david shay at telephone number (571)-272-4773.

A handwritten signature in cursive script that reads "david shay".

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330